

MAR 31 2006

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

7036 MAR 31 A 9 37

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

RAD REFERRAL 05L-09
Date of Referral March 18, 2005
Date Activated January 30, 2006
Expiration of Statute of Limitations June 24, 2009

SOURCE: Internally Generated

RESPONDENTS: Friends of Jack Orchulli and Jack Orchulli,
in his official capacity as treasurer
Jack Orchulli

RELEVANT STATUTE AND REGULATIONS: 2 U S C § 434(a)(6)(B)
11 C F R § 400 9
11 C F R § 400 21
11 C F R § 400 22
11 C F R § 400 25

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This matter concerns reporting requirements arising under the so-called "millionaires' amendment" of the Bipartisan Campaign Reform Act of 2002 (the "Amendment"), which obligate candidates to comply with special reporting and notification requirements after expending personal funds in excess of specific thresholds. The Reports Analysis Division ("RAD") has referred Friends of Jack Orchulli, the authorized committee of 2004 Senate candidate Jack Orchulli, and Jack Orchulli, in his official capacity as treasurer

(the "Committee"), for failing to timely file a statement notifying the Federal Election Commission ("Commission") and Mr Orchulli's opponents that Mr Orchulli exceeded the \$511,840 reporting threshold for expenditures from the candidate's personal funds designated for the 2004 general election, and failing to timely file three additional notices regarding additional expenditures of personal funds exceeding \$10,000 in support of his candidacy¹

Based on a review of the relevant disclosure reports and available information, this Office recommends that the Commission find reason to believe that the Committee violated the Federal Election Campaign Act of 1971, as amended (the "Act") and regulations regarding the reporting of personal funds expenditures. Because the statute and regulations create specific obligations for candidates, this Office also recommends that the Commission find that Jack Orchulli violated the Act.

II. FACTUAL SUMMARY

In January 2004, Jack Orchulli filed an FEC Form 2, Statement of Candidacy, in connection with his candidacy for United States Senate from Connecticut. On this form, Mr Orchulli indicated that he intended to spend \$500,000 above the threshold amount in the general election from his personal funds.²

Between May 14, 2004 and October 11, 2004, Mr Orchulli made a total of \$1,040,000 in loans to the Committee that were all designated for the general election. See Attachment 1. These loans were all reported on the appropriate quarterly disclosure reports.

¹ On November 14, 2005, the Committee filed an amendment to its Statement of Organization designating Jack Orchulli as the treasurer of the Committee. Peter R. McIntosh is the former treasurer. Mr Orchulli is also a respondent in this matter in his individual capacity as the candidate. See discussion, *infra*.

² There was no Republican primary for U.S. Senate in Connecticut in 2004. In that state, a political party endorses a party candidate at its party convention. The Republican convention was held on May 8, 2004 and Jack Orchulli was endorsed as the party nominee. A primary election is only held if a qualified challenger to the party-endorsed candidate receives 15% of the delegate votes during the party convention and files for a primary or, if after the convention, a challenger files the required number of petitions to qualify for access to a primary ballot. Otherwise, the party-endorsed candidate is the party nominee.

1 Mr Orchulli made three loans of \$30,000 each on May 14, 2004, June 4, 2004 and
2 June 16, 2004, respectively On June 23, 2004, he loaned an additional \$450,000 to the
3 Committee, bringing his personal loan total to \$540,000, and triggering and exceeding the
4 reporting threshold requirement of \$511,840, which required the filing of a 24 Hour Notice of
5 Expenditure from Candidate's Personal Funds ("FEC Form 10") Thereafter, Mr Orchulli
6 loaned the Committee \$250,000 on September 13, 2004, \$100,000 on September 16, 2004 and
7 \$150,000 on October 11, 2004 ³ See *id* Neither Mr Orchulli nor the Committee timely filed an
8 initial or additional FEC Form 10's disclosing these expenditures from personal funds

9 On October 7, 2004, RAD sent a Request for Additional Information ("RFAI") to the
10 Committee requesting an explanation for the absence of the initial FEC Form 10 in connection
11 with the candidate's expenditure of personal funds in the form of loans totaling \$540,000 as of
12 June 23, 2004 On October 22, 2004, the Committee filed an FEC Form 10 regarding this
13 expenditure On October 22, 2004, the Committee also filed an FEC Form 10 for each of the
14 two candidate loans made in September 2004 and for the October 11, 2004 candidate loan ⁴

15 **III. LEGAL ANALYSIS**

16 Candidates who make expenditures from personal funds to their campaigns in excess
17 of a specified threshold amount must meet special reporting and disclosure requirements ⁵

³ Subsequently, Mr Orchulli loaned the Committee \$35,000 on October 26, 2004 and \$20,000 on October 27, 2004 Since the Committee's filings of FEC Form 10 were timely with respect to these two loans, this Report does not further discuss them

⁴ In a cover letter accompanying each of the notification forms, the Committee states that it faxed a copy of the FEC Form 10 to the Secretary of the Senate and to each of Mr Orchulli's opponents Thus, it appears that the Secretary of the Senate and Mr Orchulli's three opponents did not receive any FEC Form 10's until October 22, 2004

⁵ An expenditure from personal funds includes direct contributions, an expenditure made by a candidate using personal funds, loans made by the candidate using personal funds, or a loan secured using such funds to the candidate's authorized committee See 2 U S C § 434(a)(6)(B)(i), 11 C F R § 400.4

10044273326

1 A Senate candidate or his or her principal campaign committee must notify the Secretary of the
2 Senate, the Commission and each opposing candidate when the candidate makes an expenditure
3 from personal funds exceeding two times the threshold amount ⁶ 2 U S C § 434(a)(6)(B)(iii),
4 11 C F R § 400 21(a) This notification must be received within 24 hours of the time such
5 expenditure is made *Id* For each additional expenditure of \$10,000 or more, the candidate is
6 required to notify the Secretary of the Senate, the Commission and each opposing candidate in an
7 FEC Form 10 filing within 24 hours of the time such expenditure is made, and must include,
8 among other things, the date and the amount of the expenditure and the total amount expended as
9 of the date of the filing ⁷ See 2 U S C §§ 434(a)(6)(B)(iv) and (v), 11 C F R § 400 22(a)
10 Although an FEC Form 10 is signed by the committee treasurer, the candidate is responsible for
11 ensuring that it is filed in a timely manner See 11 C F R § 400 25

12 Mr Orchulli's \$450,000 loan on June 23, 2004 caused his total personal expenditures
13 for the general election to exceed \$511,840 See footnote 5, *supra* By exceeding this amount,
14 the Committee and the candidate were required to file an FEC Form 10 with the Commission and
15 send copies to the Secretary of the Senate and to the candidate's opponents within 24 hours of
16 making the expenditure, or by June 24, 2004 The Committee did not file the initial FEC Form

⁶ The threshold amount for United States Senate candidates is the sum of \$150,000 plus an amount equal to the voting age population of the state multiplied by 4 cents See 11 C F R § 400 9 In the case of Connecticut in 2004, the threshold amount was \$255,920 (\$150,000 + (2,648,000 x .04)) Thus, an amount that is two times the threshold amount is \$511,840 (\$255,920 x 2)

⁷ A candidate's personal expenditures could entitle his opponents to an increase of three times or six times the contribution limit under 2 U S C § 441a(a)(1)(A), depending upon whether the candidate's expenditure of personal funds is more than twice the threshold amount, but not over four times the threshold amount, or more than four times the threshold amount See 2 U S C § 441a(i)(1)(C), 11 C F R § 400 40 In addition, if the candidate's expenditure of personal funds is more than 10 times the threshold amount, his opponent could be entitled to a waiver of the limits on coordinated party expenditures under 2 U S C § 441a(d) *Id* The opposition personal funds amount is distinct from the threshold reporting amount because it takes into account the personal funds expenditures of the other candidates and, depending on the date of calculation, may also take into account the gross receipts of both candidates 2 U S C § 441a(i)(1)(D), 11 C F R § 400 10 A candidate with a significant "gross receipts advantage" is less likely to qualify for the higher limits See 2 U S C § 441a(i)(1)(E)(ii), 11 C F R § 400 10 Similarly, a candidate seeking higher limits may be limited by the amount of personal funds that he or she expended See 11 C F R § 400 10

10044273327

1 10 until October 22, 2004, 120 days late Therefore, this Office recommends that the
2 Commission find reason to believe that Friends of Jack Orchulli and Jack Orchulli, in his official
3 capacity as treasurer, violated 2 U S C § 434(a)(6)(B)(iii) and 11 C F R § 400 21(a) Since the
4 Act places a requirement on the candidate to ensure that the appropriate filings are made in a
5 timely manner with respect to expenditures from personal funds, this Office recommends that the
6 Commission also find reason to believe that Jack Orchulli violated 2 U S C § 434(a)(6)(B)(iii)

7 In addition, the Committee failed to timely file additional FEC Form 10's regarding
8 Mr Orchulli's loans on September 13, 2004, September 16, 2004 and October 11, 2004, each of
9 which was in excess of \$10,000 The Committee filed the FEC Form 10's for these loans on
10 October 22, 2004, 38 days, 35 days and 10 days late, respectively Therefore, this Office
11 recommends that the Commission find that there is reason to believe that Jack Orchulli and
12 Friends of Jack Orchulli and Jack Orchulli, in his official capacity as treasurer, violated 2 U S C
13 § 434(a)(6)(B)(iv) and that Friends of Jack Orchulli and Jack Orchulli, in his official capacity as
14 treasurer, also violated 11 C F R § 400 22(a)

10044273328

IV. RECOMMENDATIONS

- 1 Open a MUR,
- 2 Find reason to believe that Friends of Jack Orchull and Jack Orchull, in his official
capacity as treasurer, violated 2 U S C § 434(a)(6)(B)(iii) and (iv) and 11 C F R
§§ 400 21(a) and 400 22(a),
- 3 Find reason to believe Jack Orchull violated 2 U S C § 434(a)(6)(B)(iii) and (iv),
- 4 Approve the attached Factual and Legal Analyses,
- 5

6 Approve the appropriate letters

Lawrence H Norton
General Counsel

Rhonda J Vordingh
Associate General Counsel
for Enforcement

March 31, 2006
Date

BY

Susan L. Lebeaux
Susan L. Lebeaux
Assistant General Counsel

Delbert K. Rigsby
Delbert K. Rigsby
Attorney

Attachments

1 Chart of Candidate Loans to the Committee designated for the 2004 General Election

--	--	--

10044273330

Friends of Jack Orchull

Candidate Expenditures from Personal Funds for 2004 General Election

Date	Amount	Type	Total to Date
May14, 2004	\$30,000	Loan	\$30,000
June 4, 2004*	\$30,000	Loan	\$60,000
June 16, 2004	\$30,000	Loan	\$90,000
June 23, 2004	\$450,000	Loan	\$540,000
September 13, 2004	\$250,000	Loan	\$790,000
September 16, 2004	\$100,000	Loan	\$890,000
October 11, 2004	\$150,000	Loan	\$1,040,000
October 26, 2004**	\$35,000	Loan	\$1,075,000
October 27, 2004**	\$20,000	Loan	\$1,095,000

* On the 2004 July Quarterly Report, the Committee reported this loan as having been received on June 4, 2004. On the FEC Form 10 filed on October 22, 2004, the Committee reported this loan as having been received on June 6, 2004.

** The Committee filed timely FEC Form 10's with respect to these loans.